

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 SOUTHERN DISTRICT OF NEW YORK
4 CASE NO: 1:20-cv-04160-JGK

5 HACHETTE BOOK GROUP, INC.,
6 ET AL.,

7 Plaintiffs,

8 vs.

9 INTERNET ARCHIVE, ET AL.,

10 Defendants.
11 _____/

12
13
14
15 Wednesday, April 6, 2022
16 11:03 a.m. - 1:44 p.m.

17
18 VIDEOTAPED DEPOSITION OF DANIEL SMITH
19

20 Taken via Zoom videoconference on behalf of the
21 Plaintiff before Elizabeth Cordoba, RMR, CRR, FPR,
22 Notary Public in and for the State of Florida at
23 Large, pursuant to Plaintiff's Notice of Taking
24 Deposition in the above cause.
25

1 marked for Identification.)

2 (Exhibit 10, iDiscover Search On Bullshit, was
3 marked for Identification.)

4 MR. BROWNING: For the record, this is Smith
5 Exhibit 10, a screenshot of the page that resulted
6 when I searched for On Bullshit on the iDiscover
7 platform.

8 BY MR. BROWNING:

9 Q. I realize you haven't seen this before, Daniel,
10 or I would be very surprised if you had. But is this
11 screenshot consistent with your experience of what happens
12 when you search for a book on iDiscover?

13 A. Yes.

14 Q. Okay. And do you see on the results list the
15 first entry is book On Bullshit, Harry G. Frankfort and at
16 the bottom in green writing it says "online access"? Do
17 you see that?

18 A. Yes.

19 Q. Do you know what online access means?

20 A. Yes.

21 Q. What does it mean?

22 A. It would give me access to an eBook of the
23 book.

24 Q. Great. And can you please turn to Exhibit 9.

25 A. Yep.

1 Q. And for the record, this is Exhibit 9 for the
2 Smith deposition. It is a copy of the page that opens
3 when you click on the first result for On Bullshit from
4 the previous exhibit, Exhibit 10.

5 Daniel, do you see where it says under the
6 heading "View It," full text available at DeGruyter? I am
7 not sure if I am pronouncing that but it's
8 D-E-G-R-U-Y-T-E-R eBooks complete? Do you see that?

9 A. Yes.

10 Q. And is that a link or -- strike that.
11 Do you know what DeGruyter eBooks is?

12 A. No.

13 Q. Okay. So have you read a book through
14 DeGruyter eBooks portal, to the best of your recollection?

15 A. I don't recall reading a book through -- when
16 using this, there are often like a lot of different
17 websites that we can be linked to. DeGruyter, I believe
18 is a publishing company. And I may have used DeGruyter
19 eBooks before when looking at eBooks through iDiscover,
20 but I don't have that specific recollection of doing so.

21 Q. Do you recognize this interface though where it
22 says full text available at: and then there is a link to
23 a publisher's website? Is that what usually happens when
24 eBooks are available?

25 A. Yes. Or it says online access in green text

1 above, which that would usually be a hyperlink.

2 Q. And is it your understanding that the eBooks
3 that you accessed through that hyperlink are licensed by
4 the publisher?

5 A. I would assume that Cambridge has licensing
6 deals with the various publishers.

7 Q. And I think we have already established this.
8 I just want to confirm it. Did you ever access the
9 Cambridge University library's eBook version of On
10 Bullshit?

11 A. I don't recall, but I don't believe so, because
12 the only time I looked at the book was in April 2020.

13 Q. And when you looked at the book in April 2020,
14 you looked at it on Internet Archive's website, correct?

15 A. Yes.

16 Q. Do you remember reading the whole book or most
17 of the book when you pulled it up on Internet Archive's
18 website?

19 A. No. I remember reading the introduction and
20 maybe probably some of the conclusion. It is quite a
21 short book, from what I recall. But I didn't read the
22 full book. I read -- I recall reading the introduction
23 and I likely read the conclusion --

24 Q. But you read the -- sorry. Didn't mean to
25 interrupt you. Please go ahead.

1 A. I was -- that may be a majority of the book in
2 terms of the length. I'm not sure.

3 Q. I will stipulate it is a very short book. But
4 did you read the parts of the book that you felt you
5 needed to read for your academic purposes?

6 A. I read the part of the books that I read.
7 Maybe there are things I didn't read that would have been
8 valuable. But I read what I read and I don't recall
9 exactly how much or what it was.

10 Q. Got it. Was there a reason that you used the
11 Internet Archive version and not the eBook version
12 provided by Cambridge University libraries?

13 MR. KAMDAR: Objection to form.

14 THE WITNESS: Not that I recall.

15 BY MR. BROWNING:

16 Q. At this time were you using the Internet
17 Archive's website as your primary resource for reading
18 eBooks? And by at this time I mean the period between
19 April 2020 and June 2020.

20 A. No. I wouldn't say it was my primary resource.

21 Q. What were the other resources you were using?

22 A. IDiscover.

23 Q. And is there a reason generally not related to
24 this book why you would choose to find a book on iDiscover
25 as opposed to Internet Archive or vice versa?

1 A. No.

2 Q. Did it matter to you which platform you used as
3 long as you could find an eBook version of the book you
4 were looking for?

5 A. It didn't -- it didn't matter to me where --
6 like which -- whether I was using Internet Archive or
7 iDiscover. I can't recall my exact thinking in terms of
8 when I would be looking things up and why. It is a fairly
9 unconscious process in a way when you have a million tabs
10 open on your computer and you are kind of looking through
11 these sort of things.

12 But I don't -- I don't -- it didn't really --
13 it didn't matter to me. Or it didn't factor into my
14 thinking because I was more concerned with getting these
15 materials I needed and writing and making progress on my
16 thesis.

17 Q. Got it. And as you sit here today, are you
18 aware that Cambridge University libraries expanded the
19 electronic text resources available to students like
20 yourself during COVID-19?

21 A. I am vaguely familiar with that. I think I got
22 some emails about it --

23 Q. And do you remember --

24 A. -- during the time.

25 Q. Sorry, I keep interrupting you. I didn't mean

REPORTER'S DEPOSITION CERTIFICATE

I, ELIZABETH CORDOBA, RMR, CRR, FPR,
certify that I was authorized to and did stenographically
report the deposition of DANIEL SMITH, the witness herein
on April 6, 2022; that a review of the transcript was
requested; that the foregoing pages numbered from 1 to
100 inclusive is a true and complete record of my
stenographic notes of the deposition by said witness; and
that this computer-assisted transcript was prepared under
my supervision.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action.

DATED this April 8, 2022.



ELIZABETH CORDOBA, RMR, CRR,
FPR